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WATANABE ING & KOMEIJI LLP  
A Limited Liability Law Partnership

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Attorneys for Defendant  
**ALIXPARTNERS, LLC**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, Hawaii citizen,	)	Civil No. CV03-00385 SOM/LEK
	)	(Copyright)
Plaintiff,	)	
	)	DEFENDANT ALIXPARTNERS, LLC'S
vs.	)	MEMORANDUM IN SUPPORT OF BILL
	)	OF COSTS; AFFIDAVIT OF JOHN T.
HAWAIIAN EXPRESS SERVICE, INC.,	)	KOMEIJI; EXHIBITS "A" - "B";
a California corporation, et	)	CERTIFICATE OF SERVICE
al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

DEFENDANT ALIXPARTNERS, LLC'S  
MEMORANDUM IN SUPPORT OF BILL OF COSTS

Defendant ALIXPARTNERS, LLC ("ALIXPARTNERS"), by and  
through its attorneys, SHELDON S. TOLL PLLC and WATANABE ING &

EXHIBIT "A"

KOMEIJI LLP, and hereby submits its memorandum in support of the Bill of Costs, and the Bill of Costs which is attached hereto as Exhibit "A". This Memorandum is submitted pursuant to Local Rule 54.2 of the Rules of the United States District Court for the District of Hawaii, and is supported by the Memorandum in Support of Bill of Costs, Affidavit of John T. Komeiji, Exhibit "A" attached hereto, and the entire record and files herein.

I. GROUND'S SUPPORTING REQUEST FOR BILL OF COSTS

1. On April 20, 2005, Plaintiff WAYNE BERRY ("Plaintiff") filed a Motion for Summary Judgment Against All Defendants including ALIXPARTNERS.

2. In response to Plaintiff's summary judgment motion, ALIXPARTNERS filed a Countermotion For Summary Judgment As to All Claims of Plaintiff on June 2, 2005 ("Countermotion") seeking summary judgment against Plaintiff on all claims of Plaintiff.

3. Plaintiff filed an opposition to ALIXPARTNERS' Countermotion on June 9, 2005.

4. ALIXPARTNERS filed its reply on June 14, 2005.

5. By Order of this Court filed on June 17, 2005, Plaintiff's summary judgment motion was denied as it pertained to ALIXPARTNERS, and ALIXPARTNERS' Countermotion was granted, disposing of all claims against ALIXPARTNERS. See Order Denying Berry's Motion for Summary Judgment Against AlixPartners; Order

Granting AlixPartners' Countermotion for Summary judgment filed on June 17, 2005 ("6/17/05 Order") at 1.<sup>1</sup>

6. Judgment on the jury verdict was entered on March 9, 2006.

7. An Amended Judgment in a Civil Case was entered on March 16, 2006 as to, among other things, this Court's 6/17/05 Order.

8. A Second Amended Judgment in a Civil Case was also entered on March 16, 2006.

## II. AUTHORITIES SUPPORTING REQUEST FOR BILL OF COSTS

Under Federal Rules of Civil Procedure ("FRCP") Rule 54(d)(1), "there is a **presumption** that the prevailing party will be awarded its taxable costs." See Dawson v. City of Seattle, 435 F.3d 1054, 1070 (9<sup>th</sup> Cir. 2006) (citing Save Our Valley v. Sound Transit, 335 F.3d 932, 944 (9<sup>th</sup> Cir. 2003)) (emphasis added). Rule 54(d)(1) provides:

**(1) Costs Other than Attorneys' Fees.** Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' **fees shall be allowed as of course to the prevailing party** unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days

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<sup>1</sup> To avoid waste and unnecessary burden upon this Court, documents previously filed as part of the record are not attached hereto. Defendants would gladly provide any needed copies at the Court's request.

thereafter, the action of the clerk may be reviewed by the court.

See Fed. R. Civ. P. 54(d)(1) (emphasis added). ALIXPARTNERS, having prevailed on its Countermotion as to all of Plaintiff's claims, is clearly the prevailing party here. See e.g., Dawson (Defendants are considered the "prevailing parties" after Plaintiffs' suits were dismissed by summary judgment).

Costs taxed pursuant to Rule 54(d)(1) include those defined in 28 U.S.C. § 1920.<sup>2</sup> ALIXPARTNERS has incurred \$2,000.01 in recoverable costs throughout this litigation as evidenced by the Bill of Costs attached hereto as Exhibit "A" and the supporting documentation attached hereto as Exhibit "B". There being no reason to deny ALIXPARTNERS the recovery of the costs identified in its Bill of Costs, ALIXPARTNERS respectfully submits that an award of costs is appropriate here "as a matter of course." See Dawson, 435 F.3d at 1070.

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<sup>2</sup> 28 U.S.C. § 1920 provides:

**Taxation of costs.** A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

DATED: Honolulu, Hawaii, March 23, 2006.

A handwritten signature in black ink, appearing to read "Karen Y. Arikawa", written over a horizontal line.

SHELDON S. TOLL  
JOHN T. KOMIJI  
KAREN Y. ARIKAWA

Attorneys for Defendant  
**ALIXPARTNERS, LLC**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, Hawaii citizen,	)	Civil No. CV03-00385 SOM/LEK
	)	(Copyright)
Plaintiff,	)	
	)	AFFIDAVIT OF JOHN T. KOMEIJI;
vs.	)	EXHIBITS "A" - "B"
	)	
HAWAIIAN EXPRESS SERVICE, INC.,	)	
a California corporation, et	)	
al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	
	)	

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AFFIDAVIT OF JOHN T. KOMEIJI

STATE OF HAWAII	)	
	)	SS.
CITY AND COUNTY OF HONOLULU	)	

JOHN T. KOMEIJI, being first duly sworn on oath,  
deposes and says:

1. I am an attorney licensed to practice law before all state and federal courts in the State of Hawaii and am one of the attorneys representing Defendant ALIXPARTNERS LLP ("ALIXPARTNERS") in the above-entitled matter.

2. I make this Affidavit based upon personal knowledge, and am competent to testify as to all matters stated herein.

3. Pursuant to Federal Rules of Civil Procedure 54(d)(1) and (2), LR 54.2 and 54.3 of the Rules of the United States District Court for the District of Hawaii, and 28 U.S.C.

§ 1924, this Affidavit sets forth the costs that were incurred by Watanabe Ing & Komeiji on behalf of ALIXPARTNERS in defending against the claims alleged by Plaintiff WAYNE BERRY in the above-entitled case.

4. Attached hereto as Exhibit "A" is a true and accurate copy of the Bill of Costs.

5. Attached hereto as Exhibit "B" is a true and accurate copy of the supporting documentation for the costs reflected in the Bill of Costs.

6. ALIXPARTNERS incurred recoverable costs totaling \$2,000.01 in defending ALIXPARTNERS in this case, defending ALIXPARTNERS against Plaintiff's summary judgment motion, and in bringing a Countermotion against Plaintiff.

7. The costs reflected in the Bill of costs are correctly stated, and based upon my experience, they were necessarily incurred and appear to be allowable by law.

8. The costs incurred defending ALIXPARTNERS include:

(1) Photocopies @ \$.13 per page . . . . . \$645.71

(2) Transcripts

Wayne Berry Vol. 1, 5/18/06 . . . . . \$626.80

Wayne Berry Vol. 2, 5/19/05 . . . . . \$496.65

(3) Postage . . . . . \$5.85

(4) Fees of the Clerk . . . . . \$225.00

TOTAL COSTS . . . . . \$2,000.01

8. I have not yet met and conferred with counsel for the Plaintiff in an effort to resolve any disputes about the claimed costs because I have been preparing for and attending a trial on the Island of Hawaii which recessed on March 22, 2006.

9. I will make a good faith attempt to meet and confer with counsel for the Plaintiff.

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge.

  
JOHN T. KOMEIJI

Subscribed and sworn to before me  
this 20th day of March, 2006.

  
CINDY C. UEHARA  
Notary Public, State of Hawaii

My Commission Expires: 3/06/07





AO 133 (Rev. 9/89) Bill of Costs

## UNITED STATES DISTRICT COURT

District of Hawaii

Berry

V.

## BILL OF COSTS

Hawaiian Express Service, Inc., et al.

Case Number: CV 03 00385 SOM-LEK

Judgment having been entered in the above entitled action on 3/9/2006 against Plaintiff Wayne Berry,  
the Clerk is requested to tax the following as costs:

Fees of the Clerk .....	\$ 225.00
Fees for service of summons and subpoena .....	
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case .....	1,123.45
Fees and disbursements for printing .....	645.71
Fees for witnesses (itemize on reverse side) .....	0.00
Fees for exemplification and copies of papers necessarily obtained for use in the case .....	
Docket fees under 28 U.S.C. 1923 .....	
Costs as shown on Mandate of Court of Appeals .....	
Compensation of court-appointed experts .....	
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 .....	
Other costs (please itemize) .....	5.85
TOTAL	\$ 2,000.01

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

## DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: please see attached

Signature of Attorney:



Name of Attorney:

Karen Y. Arikawa

For: AlixPartners LLP

Name of Claiming Party

Date: 3/23/2006

Costs are taxed in the amount of \_\_\_\_\_ and included in the judgment.

Clerk of Court

By:

Deputy Clerk

Date

EXHIBIT "A"

WITNESS FEES (computation, cf. 28 U.S.C. 1821 for statutory fees)							
NAME AND RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
TOTAL					TOTAL		\$0.00

## NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:

"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

**The Federal Rules of Civil Procedure contain the following provisions:**

Rule 54 (d)

“Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day’s notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.”

Rule 6(e)

“Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.”

### Rule 58 (In Part)

“Entry of the judgment shall not be delayed for the taxing of costs.”



INQUIRY : Case - reference

11:05am 23 MAR 06

Client : 4516 ALIX PARTNERS, LLC  
 Case : 19670 BERRY V. ALIX PARTNERS, LLC

Status : Active

Action type : All cost

Summary... Time ..... Fees ..... Cost.adv ..... Cost.inc ..... Total  
 Billed 2,000.54 2,000.54

..Ref	..Date	Cde.desc	Orgtme	Orgrte	....Orgamt	..Time	..Rate	.....Amt	S
13	05/04/05	Postage			5.85				I
Fp:0505   Bth:8533*92   Inv:112925									
12	05/10/05	Photocopi			3.12				I
Fp:0505   Bth:8532*363   Inv:112925									
Source : ASCIIC									
33	05/11/05	Photocopi			1.82				I
Fp:0505   Bth:8536*12   Inv:112925									
Source : ASCIIC									
34	05/11/05	Photocopi			26.52				I
Fp:0505   Bth:8536*34   Inv:112925									
Source : ASCIIC									
38	05/11/05	Photocopi			1.82		0.00	0.00	I
Fp:0505   Bth:8541*12   Inv:112925									
Source : ASCIIC									
39	05/11/05	Photocopi			26.52		0.00	0.00	I
Fp:0505   Bth:8541*34   Inv:112925									
Source : ASCIIC									
21	05/12/05	Miscellan			225.00				I
Fp:0505   Bth:8535*1   Chk: 02/086340,05/12/05   Inv:112925									
Source : AP 00,CUS,051205.02   Payee:CLERK, U.S. DISTRI									
Comments : Pro Hac Vice									
35	05/12/05	Photocopi			108.42				I
Fp:0505   Bth:8536*63   Inv:112925									
Source : ASCIIC									
40	05/12/05	Photocopi			108.42		0.00	0.00	I
Fp:0505   Bth:8541*63   Inv:112925									
Source : ASCIIC									
36	05/14/05	Online Re			7.65				I
Fp:0505   Bth:8537*18   Inv:112925									
37	05/14/05	Online Re			16.66				I
Fp:0505   Bth:8537*32   Inv:112925									
56	05/16/05	Photocopi	38.00		4.94				I
Fp:0505   Bth:8551*36   Inv:112925									
Source : ASCIIC									
57	05/16/05	Photocopi	89.00		11.57				I

EXHIBIT "B"

INQUIRY : Case - reference

11:05am 23 MAR 06

Client : 4516 ALIX PARTNERS, LLC  
 Case : 19670 BERRY V. ALIX PARTNERS, LLC

Status : Active

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58	05/18/05	Photocopi	122.00		15.86				I
	Fp:0505	Bth:8551*128	Inv:112925						
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59	05/18/05	Photocopi	12.00		1.56				I
	Fp:0505	Bth:8551*164	Inv:112925						
	Source	: ASCIIC							
77	05/18/05	Online Re			19.98				I
	Fp:0505	Bth:8557*5	Inv:112925						
	Comments	: Research by KYA							
60	05/19/05	Photocopi	29.00		3.77				I
	Fp:0505	Bth:8551*199	Inv:112925						
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61	05/20/05	Photocopi	28.00		3.64				I
	Fp:0505	Bth:8551*237	Inv:112925						
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63	05/23/05	Photocopi	89.00		11.57				I
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64	05/24/05	Photocopi	417.00		54.21				I
	Fp:0505	Bth:8551*376	Inv:112925						
	Source	: ASCIIC							
78	05/27/05	Online Re			42.20				I
	Fp:0505	Bth:8557*16	Inv:112925						
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85	06/01/05	Photocopi	13.00		1.69				I
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	Source	: ASCIIC							
105	06/01/05	Online Re			7.06				I
	Fp:0506	Bth:8570*48	Inv:112925						
	Comments	: Research by KYA: 6/1/05							
86	06/02/05	Photocopi	520.00		67.60				I
	Fp:0506	Bth:8566*94	Inv:112925						
	Source	: ASCIIC							

INQUIRY : Case - reference

11:05am 23 MAR 06

Client : 4516 ALIX PARTNERS, LLC  
 Case : 19670 BERRY V. ALIX PARTNERS, LLC

Status : Active

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		Source : ASCIIC							
106	06/13/05	Online Re			43.74				I
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		Comments : Research by GYT: 6/1/05 - 6/13/05							
107	06/14/05	Photocopi	108.00		14.04				I
		Fp:0506   Bth:8571*41   Inv:112925							
		Source : ASCIIC							
108	06/14/05	Photocopi	243.00		31.59				I
		Fp:0506   Bth:8571*46   Inv:112925							
		Source : ASCIIC							
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		Source : ASCIIC							
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		Source : AP 00,LIVE,20663   Payee:LIVENOTE, INC.							
		Comments : Certified copies; Exhibit Scanning (re: Wayne Berry, Vol. 2 5/19/05)							
89	06/15/05	Miscellan			626.80				I
		Fp:0506   Bth:8569*7   Chk: 02/086561,06/15/05   Inv:112925							
		Source : AP 00,LIVE,20675   Payee:LIVENOTE, INC.							
		Comments : Certified copies; Exhibit Scanning (re: Wayne Berry, Vol. 1 5/18/05)							
112	06/16/05	Photocopi	308.00		40.04				I
		Fp:0506   Bth:8575*1   Inv:112925							
		Source : ASCIIC							
113	06/16/05	Photocopi	168.00		21.84				I
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		Source : ASCIIC							
114	06/16/05	Photocopi	205.00		26.65				I
		Fp:0506   Bth:8575*13   Inv:112925							
		Source : ASCIIC							
131	07/13/05	Photocopi	245.00		31.85				I
		Fp:0507   Bth:8598*84   Inv:114055							
		Source : ASCIIC							
146	08/11/05	Photocopi	7.00		0.91				I

INQUIRY : Case - reference

11:05am 23 MAR 06

Client : 4516 ALIX PARTNERS, LLC  
Case : 19670 BERRY V. ALIX PARTNERS, LLC

Status : Active

..Ref	..Date..	Cde.desc	Orgtme	Orgrte	....Orgamt	..Time	..Rate	.....Amt	S
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149	08/17/05	Photocopi	26.00		3.38				I
	Fp:0508	Bth:8626*93	Inv:114055						
	Source	: ASCIIC							
150	09/01/05	Photocopi	10.00		1.30				I
	Fp:0509	Bth:8643*181	Inv:114055						
	Source	: ASCIIC							



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, Hawaii citizen,	)	Civil No. CV03-00385 SOM/LEK
	)	(Copyright)
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
HAWAIIAN EXPRESS SERVICE, INC.,	)	
a California corporation, et	)	Trial Date: January 24, 2006
al.,	)	
	)	
Defendants.	)	
_____	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was duly served upon the following parties by the method indicated on this date to their last known address:

TIMOTHY J. HOGAN, ESQ. (hand delivery)  
1132 Bishop Street, Suite 1405  
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WAYNE BERRY

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MELVIN PONCE, ALFREDDA WAIOLAMA,  
JACQUELINE RIO, SONIA PURDY and  
JUSTIN FUKUMOTO

LEX R. SMITH, ESQ. (hand delivery)  
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Attorneys for Defendants  
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C&S LOGISTICS OF HAWAII, LLC, C&S ACQUISITIONS, LLC,  
ES3, LLC and RICHARD COHEN

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and

KAREN L.S. FINE, ESQ. (U.S. mail)  
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Attorney for Defendants  
HAWAIIAN EXPRESS SERVICE, INC., H.E.S. TRANSPORTATION  
SERVICES, INC., CALIFORNIA PACIFIC CONSOLIDATORS, INC.,  
JEFFREY P. GRAHAM and PETER SCHAUL

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MICHAEL GURZI

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841 Bishop Street  
Honolulu, Hawaii 96813

Attorney for Defendant  
HAWAII TRANSFER COMPANY, LIMITED

DATED: Honolulu, Hawaii, March 23, 2006.



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SHELDON S. TOLL  
JOHN T. KOMIJI  
KAREN Y. ARIKAWA

Attorneys for Defendant  
ALIXPARTNERS, LLC